

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,
Plaintiff,
v.
ELAINE MARIE THOMAS,
Defendant.

NO. CR20-5244BHS

PLEA AGREEMENT

ELAINE MARIE THOMAS,
Defendant

The United States of America, by and through Tessa M. Gorman, Acting United States Attorney for the Western District of Washington, and Seth Wilkinson, Assistant United States Attorney, Defendant Elaine Thomas, and Defendant's attorney, John Carpenter, enter into the following Plea Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B).

1. **The Charge.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right, and to enter a plea of guilty to the crime of Major Fraud Against the United States, in violation of Title 18, United States Code, Section 1031, as charged in Count 1 of the Indictment.

1 2. **Elements of the Offense.** The elements of the offense to which Defendant
2 is pleading guilty are as follow:

3 a. The defendant knowingly executed a scheme with intent to defraud
4 the United States, or to get money or property by using materially false representations,
5 pretenses or promises;

6 b. The scheme involved the receipt of money as a contractor of the
7 United States or as a subcontractor or a supplier on a contract with the United States; and

8 c. The value of the contract exceeded \$1 million.

9 3. **The Penalties.** Defendant understands that the statutory penalties
10 applicable to the offense to which Defendant is pleading guilty are as follows: a period of
11 imprisonment of up to ten years; a fine of up to \$1,000,000, a period of supervised
12 release of up to three years, and a \$100 special assessment. If the defendant is sentenced
13 to probation, the maximum period of probation is five years.

14 Defendant understands that supervised release is a period of time following
15 imprisonment during which Defendant will be subject to certain restrictive conditions and
16 requirements. Defendant further understands that, if supervised release is imposed and
17 Defendant violates one or more of the conditions or requirements, Defendant could be
18 returned to prison for all or part of the term of supervised release that was originally
19 imposed. This could result in Defendant serving a total term of imprisonment greater
20 than the statutory maximum stated above.

21 Defendant understands that as a part of any sentence, in addition to any term of
22 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
23 restitution to any victim of the offense, as required by law.

24 Defendant further understands that the consequences of pleading guilty may
25 include the forfeiture of certain property, either as a part of the sentence imposed by the
26 Court, or as a result of civil judicial or administrative process.

27 Defendant agrees that any monetary penalty the Court imposes, including the
28 special assessment, fine, costs, or restitution, is due and payable immediately and further

1 agrees to submit a completed Financial Disclosure Statement as requested by the United
2 States Attorney's Office.

3 4. **Rights Waived by Pleading Guilty.** Defendant understands that by
4 pleading guilty, Defendant knowingly and voluntarily waives the following rights:

5 a. The right to plead not guilty and to persist in a plea of not guilty;
6 b. The right to a speedy and public trial before a jury of Defendant's
7 peers;

8 c. The right to the effective assistance of counsel at trial, including, if
9 Defendant could not afford an attorney, the right to have the Court appoint one for
10 Defendant;

11 d. The right to be presumed innocent until guilt has been established
12 beyond a reasonable doubt at trial;

13 e. The right to confront and cross-examine witnesses against Defendant
14 at trial;

15 f. The right to compel or subpoena witnesses to appear on Defendant's
16 behalf at trial;

17 g. The right to testify or to remain silent at trial, at which trial such
18 silence could not be used against Defendant; and

19 h. The right to appeal a finding of guilt or any pretrial rulings.

20 5. **United States Sentencing Guidelines.** Defendant understands and
21 acknowledges that the Court must consider the sentencing range calculated under the
22 United States Sentencing Guidelines and possible departures under the Sentencing
23 Guidelines together with the other factors set forth in Title 18, United States Code,
24 Section 3553(a), including: (1) the nature and circumstances of the offense(s); (2) the
25 history and characteristics of Defendant; (3) the need for the sentence to reflect the
26 seriousness of the offense(s), to promote respect for the law, and to provide just
27 punishment for the offense(s); (4) the need for the sentence to afford adequate deterrence
28 to criminal conduct; (5) the need for the sentence to protect the public from further

1 crimes of Defendant; (6) the need to provide Defendant with educational and vocational
2 training, medical care, or other correctional treatment in the most effective manner; (7)
3 the kinds of sentences available; (8) the need to provide restitution to victims; and (9) the
4 need to avoid unwarranted sentence disparity among defendants involved in similar
5 conduct who have similar records. Accordingly, Defendant understands and
6 acknowledges that:

7 a. The Court will determine Defendant's Sentencing Guidelines range
8 at the time of sentencing;

9 b. After consideration of the Sentencing Guidelines and the factors in
10 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
11 maximum term authorized by law;

12 c. The Court is not bound by any recommendation regarding the
13 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
14 range offered by the parties or the United States Probation Department, or by any
15 stipulations or agreements between the parties in this Plea Agreement; and

16 d. Defendant may not withdraw a guilty plea solely because of the
17 sentence imposed by the Court.

18 6. **Ultimate Sentence.** Defendant acknowledges that no one has promised or
19 guaranteed what sentence the Court will impose.

20 7. **Statement of Facts.** Defendant admits Defendant is guilty of the charged
21 offense. The parties agree on the following facts:

22 a. **Background:** Between 1977 and May 2017, defendant Elaine
23 Thomas worked as a metallurgist for a steel foundry in Tacoma, Washington. Since
24 2008, the foundry has been owned and operated by Bradken, Inc.

25 b. Bradken is the leading supplier of certain high-yield steel castings
26 used to construct naval submarines. In particular, Bradken produces castings made of
27 "HY-80" or "HY-100" high-yield steel. Bradken produces these castings as a
28 subcontractor or supplier for companies that contract directly with the United States

1 Navy. The value of the contracts between the prime contractors and the Navy
2 substantially exceed \$1 million for each submarine.

3 c. The HY-80 and HY-100 castings produced by Bradken are critical
4 components of the submarines on which they are installed, and some of the castings form
5 part of the hull. As a result, it is critical that the mechanical properties of the castings
6 (such as strength and toughness) meet rigorous specifications. These specifications are
7 set forth in publications known as “Tech Pub 300” and “Military Specification 23008.”
8 The Tech Pub 300 and Military Specification 23008 specifications collectively will be
9 referenced below as “the Specifications.”

10 d. Each production of molten steel is known as a “heat.” Each heat
11 produces one or more castings, as well as test blocks, which are specimens of the steel
12 used to test the characteristics of the steel in that heat. When Bradken delivers a casting
13 to a prime contractor, it is required to report and certify the test results for the heat from
14 which the casting was produced. The prime contractor, in reliance on those certifications,
15 in turn certifies to the Navy that the submarine, including the components produced by
16 Bradken, satisfies the Specifications. The Navy relies on these certifications in accepting
17 submarines for service and making payments to the prime contractor.

18 e. ***Metallurgical Testing at Bradken:*** The Specifications require
19 Bradken to perform certain tests on each heat. One of the required tests is known as the
20 “Charpy V-notch” test. The Charpy V-notch test evaluates the toughness of the steel, that
21 is, the amount of dynamic force the steel can withstand. One type of Charpy V-notch test
22 involves cooling the specimen to -100 degrees Fahrenheit. The Specifications require the
23 foundry to perform three -100°F Charpy V-notch tests for each heat, and further require
24 that the average result for the three tests be no less than 50 foot-pounds, with no single
25 value below 45 foot-pounds. If a casting does not satisfy the Specifications’ Charpy-V
26 notch requirements, this increases the risk that the component could fail under certain
27 circumstances, such as a collision or a shock event, which may occur during wartime
28 scenarios.

12 g. If a heat fails one or more tests, a steel producer may conduct a
13 "reheat treatment," which involves placing the steel back into the oven in an effort to
14 improve the heat's mechanical characteristics. If the heat passes all relevant
15 Specifications in tests conducted after the reheat treatment, the producer may certify the
16 heat using the post-reheat test results. However, under the Specifications, the producer
17 may only rely on results conducted after the reheat treatment, that is, it may not combine
18 some passing results from tests conducted before the reheat treatment with other passing
19 results from tests conducted after the reheat treatment. This is because the reheat
20 treatment changes the mechanical properties of the steel, so tests performed prior to the
21 reheat treatment no longer reflect the steel's properties.

i. Between 1977 and May 22, 2017, Thomas served as a metallurgist, Metallurgy Lab Supervisor, Metallurgy Services Manager, and, from 2009 on, as Director of Metallurgy, for Bradken. Thomas's responsibilities included reviewing test results, determining whether those results complied with the Specifications, and then submitting and certifying the results to the prime contractor.

j. During Thomas's tenure at Bradken, when lab personnel performed a test, they typically recorded the test results on a notecard. Thomas or other lab personnel then copied the test results into a database known as "AS400." After 2008, test results were also entered into a second database known as "B&L." Bradken used the test results recorded in B&L when submitting certifications to the prime contractor.

k. ***Thomas's Falsification of Test Results:*** In some cases when Bradken's lab personnel recorded failing Charpy V-notch test results on testing notecards, Thomas altered the notecards to change the recorded Charpy V-notch results from a failing value to a passing value. Thomas sometimes changed the first digit of the test results on the notecard to increase the result by ten or twenty foot-pounds from a failing value to a passing value. For example, if the test returned a value of 37 foot-pounds (a failing value), Thomas sometimes altered the 3 so that it appeared to be a 5, creating the false appearance that the test result was 57 foot-pounds (a passing value).

1. Similarly, in some cases where Bradken's lab personnel recorded failing tensile yield strength test results on a notecard, Thomas altered the test cards to make it appear that the test had returned passing results. For example, in cases where an HY-80 heat returned a yield strength value between 70 and 79 ksi (a failing value), Thomas sometimes converted the first digit (the 7) to an 8, creating the appearance that the test had returned a passing result of 80 ksi or greater (a passing value).

m. In cases where she altered test results, Thomas typically entered the accurate (non-passing) test results into the AS400 database, but entered the falsified (passing) results into the B&L database. Thomas or others under her supervision then produced Certified Metallurgical Test Reports reporting the falsified numbers from the

1 B&L database to the prime contractor. Thomas knew that the prime contractor would
2 rely on those results when certifying to the Navy that the casting met the Specifications.

3 n. In cases where a heat failed one or more tests, Thomas sometimes
4 ordered that the castings and test blocks be reheat treated. However, in some cases, the
5 heats would again fail certain tests after the reheat treatment. In those cases, Thomas
6 sometimes produced, and caused to be produced, Certified Metallurgical Test Reports
7 that impermissibly combined certain passing test results from tests conducted prior to the
8 reheat treatment with passing results from other tests conducted after the reheat
9 treatment. These reports made it appear that the heat had passed all tests conducted after
10 the reheat treatment when, as Thomas knew, the heat had failed some of the tests
11 conducted after the reheat treatment, and therefore did not meet the Specifications.

12 o. Thomas also produced, and caused to be produced, Certified
13 Metallurgical Test Reports that improperly reported results from informal tests known as
14 "pretests." Under the Specifications, pretests may never be included on Certified
15 Metallurgical Test Reports. These Certified Metallurgical Test Reports created the
16 appearance that the heat had passed all respective tests, when in fact, as Thomas knew,
17 the heat had failed some of the Specifications.

18 p. Investigators' review of Bradken's records concluded that, between
19 1985 and 2017, Thomas falsified one or more test results for at least 240 heats of high-
20 yield steel provided to the United States Navy for installation in submarines, including
21 heats that produced critical hull components. These 240 heats represented approximately
22 50% of all of the known high-yield steel that the foundry produced for installation on
23 submarines over this period. The conduct imposed costs on the Naval Sea Systems
24 Command (NAVSEA) that are estimated to be greater than \$9,500,000 and less than
25 \$25,000,000.

26 q. **Thomas's Statements to Bradken and Federal Investigators:** On
27 May 22, 2017, a Bradken metallurgist discovered evidence that THOMAS had falsified
28 Charpy V-notch test results for one heat (heat number 433415). When members of

1 Bradken management confronted Thomas, she admitted to falsifying the test results for
2 heat 433415, and made statements suggesting that she had also falsified other test results.
3 However, in a subsequent interview with her employer, Thomas recanted this admission.

4 r. ***The Charged Alterations:*** As set forth above, between
5 approximately 1985 and May 22, 2017, Thomas knowingly devised and executed a
6 scheme with the intent to defraud the United States Navy, and to obtain money and
7 property by means of materially false and fraudulent pretenses and representations in
8 connection with a contract with the United States with a value in excess of \$1 million.
9 As one example of this conduct, on or about March 17, 2016, Thomas caused to be
10 submitted to the prime contractor a Certified Metallurgical Test Report for heat 433415
11 certifying that the results for the Charpy V-Notch tests were 53, 47, and 56 foot-pounds,
12 when in fact, as Thomas knew, the true test results were 33, 27, and 36 foot-pounds.

13 The parties agree that the Court may consider additional facts contained in the
14 Presentence Report (subject to standard objections by the parties) and/or that may be
15 presented by the United States or Defendant at the time of sentencing, and that the factual
16 statement contained herein is not intended to limit the facts that the parties may present to
17 the Court at the time of sentencing.

18 8. **Agreements Regarding Application of Sentencing Guidelines.** The
19 parties agree that the applicable Sentencing Guideline calculation is as follows:
20 a. A base offense level of six (6) pursuant to USSG § 2B1.1(a)(2);
21 b. A twenty (20) level enhancement pursuant to USSG
22 § 2B1.1(b)(1)(K) because the loss exceeds \$9,500,000, but is less than 25,000,000; and
23 c. A two (2) point enhancement pursuant to USSG § 3B1.3 because the
24 defendant abused a position of public or private trust or used a special skill in a manner
25 that facilitated the commission or concealment of the offense.

26 Defendant understands that the government will argue that under USSG § 2B1.1(b)(16)
27 an additional 2-point enhancement should apply on the theory that the offense involved
28 the conscious or reckless risk of death or bodily injury.

1 9. **Acceptance of Responsibility.** At sentencing, if the Court concludes
2 Defendant qualifies for a downward adjustment for acceptance of responsibility pursuant
3 to USSG § 3E1.1(a) and Defendant's offense level is 16 or greater, the United States will
4 make the motion necessary to permit the Court to decrease the total offense level by three
5 (3) levels pursuant to USSG §§ 3E1.1(a) and (b), because Defendant has assisted the
6 United States by timely notifying the United States of Defendant's intention to plead
7 guilty, thereby permitting the United States to avoid preparing for trial and permitting the
8 Court to allocate its resources efficiently.

9 10. **Recommendations Regarding Imprisonment.** Pursuant to Federal Rule
10 of Criminal Procedure 11(c)(1)(B), the parties agree that the government will recommend
11 a custodial sentence no longer than the low end of the United States Sentencing
12 Guidelines range as determined by the Court at the time of sentencing. Defendant is free
13 to recommend any sentence. Defendant understands that this recommendation is not
14 binding on the Court, and the Court may reject these recommendations and may impose
15 any term of imprisonment up to the statutory maximum penalty authorized by law.
16 Defendant further understands that Defendant cannot withdraw a guilty plea simply
17 because of the sentence imposed by the Court. Except as otherwise provided in this Plea
18 Agreement, the parties are free to present arguments regarding any other aspect of
19 sentencing.

20 11. **Restitution.** Restitution for the losses incurred by the United States in this
21 matter has already been paid by the defendant's employer. In light of this prior payment
22 of the full obligation, no further restitution payment is due from Defendant.

23 12. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
24 the United States Attorney's Office for the Western District of Washington agrees not to
25 prosecute Defendant for any additional offenses known to it as of the time of this Plea
26 Agreement based upon evidence in its possession at this time, and that arise out of the
27 conduct giving rise to this investigation, and moves to dismiss the remaining counts in
28 the Indictment at the time of sentencing. In this regard, Defendant recognizes the United

1 States has agreed not to prosecute all of the criminal charges the evidence establishes
2 were committed by Defendant solely because of the promises made by Defendant in this
3 Plea Agreement. Defendant agrees, however, that for purposes of preparing the
4 Presentence Report, the United States Attorney's Office will provide the United States
5 Probation Office with evidence of all conduct committed by Defendant.

6 Defendant agrees that any charges to be dismissed before or at the time of
7 sentencing were substantially justified in light of the evidence available to the United
8 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
9 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119
10 (1997).

11 **13. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if
12 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
13 Agreement and Defendant may be prosecuted for all offenses for which the United States
14 has evidence. Defendant agrees not to oppose any steps taken by the United States to
15 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
16 Agreement. Defendant also agrees that, if Defendant is in breach of this Plea Agreement,
17 Defendant has waived any objection to the re-institution of any charges that previously
18 were dismissed or any additional charges that had not been prosecuted.

19 Defendant further understands that if, after the date of this Plea Agreement,
20 Defendant should engage in illegal conduct, or conduct that violates any conditions of
21 release or the conditions of confinement (examples of which include, but are not limited
22 to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while
23 pending sentencing, and false statements to law enforcement agents, the Pretrial Services
24 Officer, Probation Officer, or Court), the United States is free under this Plea Agreement
25 to file additional charges against Defendant or to seek a sentence that takes such conduct
26 into consideration by requesting the Court to apply additional adjustments or
27 enhancements in its Sentencing Guidelines calculations in order to increase the applicable
28 advisory Guidelines range, and/or by seeking an upward departure or variance from the

1 calculated advisory Guidelines range. Under these circumstances, the United States is
2 free to seek such adjustments, enhancements, departures, and/or variances even if
3 otherwise precluded by the terms of the Plea Agreement.

4 **14. Waiver of Appellate Rights and Rights to Collateral Attacks.**

5 Defendant acknowledges that, by entering the guilty plea required by this Plea
6 Agreement, Defendant waives all rights to appeal from Defendant's conviction, and any
7 pretrial rulings of the Court, and any rulings of the Court made prior to entry of the
8 judgment of conviction. Defendant further agrees that, provided the Court imposes a
9 custodial sentence that is within or below the Sentencing Guidelines range (or the
10 statutory mandatory minimum, if greater than the Guidelines range) as determined by the
11 Court at the time of sentencing, Defendant waives to the full extent of the law:

12 a. Any right conferred by Title 18, United States Code, Section 3742,
13 to challenge, on direct appeal, the sentence imposed by the Court, including any fine,
14 restitution order, probation or supervised release conditions, or forfeiture order (if
15 applicable); and

16 b. Any right to bring a collateral attack against the conviction and
17 sentence, including any restitution order imposed, except as it may relate to the
18 effectiveness of legal representation.

19 This waiver does not preclude Defendant from bringing an appropriate motion
20 pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or
21 the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

22 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
23 attacking (except as to effectiveness of legal representation) the conviction or sentence in
24 any way, the United States may prosecute Defendant for any counts, including those with
25 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
26 Agreement.

27 **15. Voluntariness of Plea.** Defendant agrees that Defendant has entered into
28 this Plea Agreement freely and voluntarily, and that no threats or promises were made to

1 induce Defendant to enter a plea of guilty other than the promises contained in this Plea
2 Agreement or set forth on the record at the change of plea hearing in this matter.

3 16. **Statute of Limitations.** In the event this Plea Agreement is not accepted
4 by the Court for any reason, or Defendant breaches any of the terms of this Plea
5 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
6 the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the
7 Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach
8 of the Plea Agreement by Defendant is discovered by the United States Attorney's
9 Office.

10 17. **Completeness of Plea Agreement.** The United States and Defendant
11 acknowledge that these terms constitute the entire Plea Agreement between the parties,
12 except as may be set forth on the record at the change of plea hearing in this matter. This
13 Plea Agreement binds only the United States Attorney's Office for the Western District
14 of Washington. It does not bind any other United States Attorney's Office or any other
15 office or agency of the United States, or any state or local prosecutor.

16 Dated: November 8, 2021.

Elaine Thomas
ELAINE THOMAS
Defendant


JOHN CARPENTER
Attorney for Defendant

C. SETH WILKINSON
SETH WILKINSON
Assistant United States Attorney